IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18..01..2007

C O R A M

THE HONOURABLE MRS. JUSTICE PRABHA SRIDEVAN

W.P. Nos.49172, 32374, 36024, 39330,
48614, 47813, 38812 and 38848 of 2006

W.P. No.49172 of 2006 :

T. Narayanan .. Petitioner

versus

Power Grid Corporation (India) Limited,
59, State Bank Colony,
West Tambaram,
Chennai-45. .. Respondent

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Prayer : Petitions under Article 226 of the Constitution of India to issue a writ of mandamus for bearing the respondent, its men, sevants or agents or any one claiming under them from in any manner erecting any pillar or post for the purpose of high tension power supply or otherwise, over the property of an extent of 28.33-1/2 acres in Survey Nos. 86,97/1 and 2, 100,101,103,104,105,106,107/1, 2 and 3, 108, 118/1,2 and 3 119,120/1 and 4 121/1, 124, 125/1 and 2, 126, 127, 128/1,129, 130, 142/1 and 2 144-part, 146, 147/1 to 5 and 148/1 to 4 of No.79 Goodaloor Village within Maraimalai Nagar Town Panchayat, Kancheepuram District.

WP.No.36024 of 2006:-

S. Ramachandran ....Petitioner

vs

1. Power Grid Corporation of India Ltd.,
rep by its General Manager,
32, Race Course Road, Bangalore 560 001.

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2. The Deputy General Manager,
Power Grid Corporation of India Ltd.,
59, Brindavan Street, Tambaram West,
Chennai 600 040.

Writ of mandamus forbearing the respondents, their men, agents and subordinates from in any manner constructing electricity transmission tower in the petitioner's lands situated in Survey nos.57/1, 57/2, 57/3, 57/4, 58, 59/2A, 59/4B, 66/1, 66/2, 66/5, and 66/6 in Vellarithaangal Village, Sriperambathur Taluk, Kancheepuram District except in accordance with due process of law.

WP 39330 of 2006:

M/s Ayanavaram Educational Trust,
rep. by its Managing Trustee,
Mr. Moosa Having their Office at
Dhaanish Nagar,
Chennai - 601 301.
Kancheepuram Dt. .. Petitioner

vs.

1. Power Grid Corporation of India Ltd,.
rep.by its General manager
32, Race Course Road,
Bangalore-560 001.

2. The Deputy General Manager
Power Grid Corporation of India Ltd,
59, Brindavan St,
Tambaram West,
Chennai - 600 040. .. Respondents

forbearing the Respondents, their men, agents and subordinates from in any manner erecting or constructing High Tension Electrical Transmission Tower or High Voltage Electricity Lines in or across the petitioner's lands etc., situated at No.150, Vellerithangal Village, Sriperumbudur Taluk, Kancheepuram District and more particularly set out in the Schedule hereunder, except in accordance with due process of law.

WP 48614 of 2006;

N. Sukumar .. Petitioner

vs.

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Power Grid Corporation of India Ltd,
The Government of India Enterprises
11/3, PMR Layout Entension,
5th Street,
Goldwins Civil Aerodrome,
Coimbatore-14. .. Respondent

Petition filed to issue Writ of mandamus forbearing the respondent herein from erecting high tension electricity poles over the petitioner's lands in Survey No. 3/3 and 4/3 of Itchipatti Village, Palladam Taluk, Coimbatore District by considering his representation dt. 18.9.2006 and 30.9.2006.

WP NO. 47813 OF 2006

R. KANNAN Petitioner

vs

1. OFFICER IN CHARGE
M/S. POWER GRID CORPORATION OF INDIA LTD
MINISTRY OF POWER
CONSTRUCTION AREA OFFICE,
59, BRINDAVAN ST., TAMBARAM WEST.
CHENNAI 45

2. THE CHAIRMAN
M/S POWER GRID CORPORTION OF INDIA LTD
MINISTRY OF POWER,
KATWARIA SARAI, NEW DELHI. ... Respondents

Writ of Mandamus or any other appropriate writ, direction forbering the respondents from putting up tower for the purpose of High Tension overhead Lines in Surey No. 362 and 363 of Ninnakari Village, Kattankulathur, kancheepuram district mesuring 13.67 acres and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case

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WP NO. 38848 OF 2006 AND 38812/2006

A. Saraswathi .. Petitioner in
WP NO. 38848/06

P. Balamani .. Petitioner in
WP NO. 38812/06

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vs

1. THE DISTRICT COLLECTOR
COIMBATORE DIST., COIMBATORE.

2. THE CHIEF ENGINEER
POWER GRID CORPORATION OF INDIA LTD.
(A GOVT. OF INDIA ENTERPRISES)
3, FIRST FLOOR, PMR LAYOUT EXTENSION,
CIVIL AERODROME POST, COIMBATORE.

3. THE SUPERINTENDING ENGINEER
KOVAI ELECTRICITY DISTRIBUTION CIRCLE,
KOVAI SOUTH, COIMBATORE

Writ of Mandamus in the nature of Writ forbearing the respondents their men and their agents from interfering with the petitioners peaceful possession and enjoyment of the land comprised in S.No.308/1 of K.Ayyampalayam Village, Palladam Taluk, Coimbatore District and measuring an extent of 1.335 acres except by due process of law.

W.P.32374 of 2006

St. Joseph Residential School,
rep by Superior general and
Managing Trustee,
Shri Sister Virgin
having head office at
Amala Bhavan,
Rudra Road, St. Thomas Mount,
Chennai-16. ... Petitioner

Vs

Deputy General Manager,
The Power Grid Corporation of India,
No. 59, Brindavana Venue,
Tambaram West, Chennai-45. ... Respondents

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Petition under Art 226 of the Constitution of India issue a writ of mandamus in the nature of direction directing the respondent to consider our representation dated 28.8.2006 before proceeding with the errection of Power Grid/High Tension Poles in accordance to law and also to give the petitioner opportunity of hearing before carrying on with the said proposal.

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For petitioner in W.P.36024 of 2006 : Mr. R. Muthukumarasamy, Senior Counsel for Mr. P.V. Bakthavatchalam

For petitioner in W.P.49172 of 2006 : Mr. AR.L. Sundaresan, Senior Counsel for Mrs. AL. Gandhimathi

For petitioner in W.P.47813 of 2006 : Mr. M. Md. Ibrahim Ali

For petitioner in W.P.48614 of 2006 : Mr. N. Manokaran

For petitioner in W.Ps.38812 & 38848 of 2006 : Mr. D. Krishnakumar

For petitioner in W.P.39330 of 2006 : Mr. S.A. Hafiz

For petitioner in W.P.32374 of 2006 : Mr. Adi Narayana Rao

For Power Grid Corpn. Ltd. : Mr. Jeyesh Dolia and Mr. Mohammed Moin for M/s. Aiyar & Dolia

For District Collector in W.Ps. 38812 & 38848 of 2006 : Mr. S. Rajasekar, Government Advocate

For Electricity Board in W.Ps. 38812 & 38848 of 2006 : Mr. J. Ravindran

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O R D E R

The writ petitioners are owners of properties. They pray that a writ of mandamus be issued forbearing the respondent/Power Grid Corporation from erecting pillars or posts or transmission towers in their respective lands for the purpose of drawing Overhead High Tension Power Supply Lines. Writ Petition No.32374 of 2006 is for consideration of the petitioner's representation before proceeding to erect such post or pillar or tower in respect of their land.

2. Two projects are involved in these writ petitions. One relates to carrying out Reconnaissance, Preliminary Survey, Detailed Survey, Check Survey and Contouring at Tower Locations for

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400 KV D/C LILO Line from existing 400 KV S/C Kolar - Sriperumbudur Line to New Sub-Station at Kalivandapattu (Melakottaiyur) and the other relates to the construction of Udumalpet to Arasur 400 KV D/C Power Transmission Line comprising 195 Towers with a length of 65 kilometers, connecting Udumalpet 400 KV Sub-Station to Arasur 400 KV Sub-Station. The Power Grid Corporation (hereinafter referred to as the 'Corporation') has been entrusted with the above works under schemes duly approved by the Government of India for providing quality power at large with greater reliability, particularly to the agricultural, residential and commercial establishments in the State of Tamil Nadu in general and the villages of Udumalpet and Arasur in particular, which in turn will be a big boost to the industrial and agricultural growth of the State.

3. The main grievance of the writ petitioners is that the statutory provisions were ignored by the Corporation while installing the transmission towers across their respective lands; that the entry by the Corporation into their private property is without authority; that there are alternative lands which are available, which can be used for the purpose; that the erection of these towers is to the detriment of the petitioners' rights guaranteed under Article 300-A of the Constitution of India; and that no opportunity was given to the petitioners to putforth their objections.

4. Mr. R. Muthukumarasamy and Mr. AR.L. Sundaresan, learned senior counsel appearing for the writ petitioners made their submissions on facts and in addition, they pointed out that the licensee namely the Corporation cannot exercise its power except in accordance with the provisions of the Works of Licensees Rules, 2006, the Indian Telegraph Act, 1885 and the Electricity Act, 2003. It was pointed out that the Indian Telegraph Act as well as the Works of Licensees Rules (Rules in short) require that permission should be obtained by the licensee from the District Magistrate when there is resistance/obstruction to the erection of the towers or carrying out the works etc., as the case may be.

5. On the other hand, the learned counsel appearing for the Corporation submitted that this project is a very ambitious project where huge expenditure of money is involved and that there cannot be any deviation from the actual layout of the project at the instance of the petitioners, since the project has been undertaken after due consideration of various factors, which includes the route particulars, the environmental impact, construction problems, availability of labour, infrastructural issues, etc. and there cannot be any detour or deviation merely because one person finds it inconvenient to have the transmission towers installed across his land. The learned counsel also produced photographs and

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submitted that the height and width of the transmission towers would allow tractors to easily pass underneath those towers and there would be, if at all, minimal interference with agricultural operations; there are no dwelling houses in the lands which are involved in these writ petitions and when the Electricity Act does not contemplate prior notice, no person can complain of want of opportunity. The learned counsel further submitted that it is futile to rely on the provisions of the Works of Licensees Rules which speak of permission in writing from the District Magistrate, since Sub-rule (4) of Rule 3 specifically excludes the licensees who have been empowered under Section 164 of the Electricity Act from the provisions of Rule 3. The learned counsel also submitted that as on date, there has been no objection or obstruction from any party and even the prayer in the writ petitions is only for a mandamus and therefore, even assuming without admitting that the Rules do apply, the Corporation has not received any "objections in respect of the works to be carried out in this regard". The learned counsel submitted that if the petitioners have any grievance, they have to lodge the same before the District Magistrate and thereafter, the Corporation could deal with it. The learned counsel also pointed out the practical difficulties that an authority such as the Corporation would face if it is to approach the District Magistrate each and every time there is an objection by a land owner for erection of a transmission tower.

6. The following questions arise for consideration in these writ petitions :

(i) Whether the petitioners are objectors in the eye of law?

(ii) Who is to approach the District Magistrate if there is an objection to the carrying out of any work or the erection of transmission tower/telegraphic pole, as the case may be? and

(iii) Whether Sub-rule (4) of Rule 3 of the Works of Licensees Rules, 2006 obviates the necessity of approach the District Magistrate for permission in writing?

7. The relevant statutory provisions are extracted hereunder :-

The Works of Licensees Rules, 2006

"3. Licensee to carry out works. - (1) A licensee may -

(a) carry out works, lay down or place any electric supply line or other works in, through, or against, any building, or on, over or under any land whereon, whereover or whereunder any electric supply-line or works has not already been lawfully laid down or placed by such licensee, with the prior consent of the owner or occupier of any building or land;

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(b) fix any support of overhead line or any stay or strut required for the purpose of securing in position any support of any overhead line on any building or land or having been so fixed, may alter such support :

Provided that in case where the owner or occupier of the building or land raises objections in respect of works to be carried out under this rule, the licensee shall obtain permission in writing from the District Magistrate or the Commissioner of Police or any other officer authorised by the State Government in this behalf, for carrying out the works :

Provided further that if at any time, the owner or occupier of any building or land on which any works have been carried out or any support of an overhead line, stay or strut has been fixed shows sufficient cause, the District Magistrate or the Commissioner of Police, or the officer authorised may by order in writing direct for any such works, support, stay or strut to be removed or altered.

(2) When making an order under sub-rule (1), the District Magistrate or the Commissioner of Police or the officer so authorised, as the case may be, shall fix, after considering the representations of the concerned persons, if any, the amount of compensation or of annual rent, or of both, which should in his opinion be paid by the licensee to the owner or occupier.

(3) Every order made by a District Magistrate or a Commissioner of Police or an authorised officer under sub-rule (1) shall be subject to revision by the Appropriate Commission.

(4) Nothing contained in this rule shall effect the powers conferred upon any licensee under Section 164 of the Act."

The Indian Telegraph Act, 1885

"10. Power for telegraph authority to place and maintain telegraph lines and posts

The telegraph authority may, from time to time, place and maintain a telegraph line under, over, along, or across, and posts in or upon, any immovable property :

PROVIDED that -

(a) the telegraph authority shall not exercise the powers conferred by this section except for the purposes of a telegraph established or maintained by the Central Government, or to be so established or maintained;

(b) the Central Government shall not acquire any right other than that of user only in the property under, over, along, across, in or upon which the telegraph authority

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places any telegraph line or post; and

(c) except as hereinafter provided, the telegraph authority shall not exercise those powers in respect of any property vested in or under the control or management of any local authority, without the permission of that authority; and

(d) in the exercise of the powers conferred by this section, the telegraph authority shall do as little damage as possible, and, when it has exercised those powers in respect of any property other than that referred to in clause (c), shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers."

"16. Exercise of powers conferred by section 10, and disputes as to compensation, in case of property other than that of a local authority

(1) If the exercise of the powers mentioned in section 10 in respect of property referred to in clause (d) of that section is resisted or obstructed, the District Magistrate may, in his discretion, order that the telegraph authority shall be permitted to exercise them.

(2) If, after the making of an order under sub-section (1), any person resists the exercise of those powers, or, having control over the property, does not give all facilities for their being exercised, he shall be deemed to have committed an offence under section 188 of the Indian Penal Code, 1860 (45 of 1860).

(3) If any dispute arises concerning the sufficiency of the compensation to be paid under section 10, clause (d), it shall, on application for that purpose by either of the disputing parties to the District Judge within whose jurisdiction the property is situate, be determined by him.

(4) If any dispute arises as to the persons entitled to receive compensation, or as to the proportions in which the persons interested are entitled to share in it, the telegraph authority may pay into the court of the District Judge such amount as he deems sufficient or, where all the disputing parties have in writing admitted the amount tendered to be sufficient or the amount has been determined under sub-section (3), that amount; and the District Judge, after giving notice to the parties and hearing such of them as desire to be heard, shall determine the persons entitled to receive the compensation or, as the case may be, the proportions in which the persons interested are entitled to share in it.

(5) Every determination of a dispute by a District Judge under sub-section (3), or sub-section (4) shall be final:

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PROVIDED that nothing in this sub-section shall affect the right of any person to recover by suit the whole or any part of any compensation paid by the telegraph authority, from the person who has received the same."

The Electricity Act, 2003

"164. Exercise of powers of Telegraph Authority in certain cases. - The Appropriate Government may, by order in writing, for the placing of electric lines or electrical plant for the transmission of electricity or for the purpose of telephonic or telegraphic communications necessary for the proper co-ordination of works, confer upon any public officer, licensee or any other person engaged in the business of supplying electricity under this Act, subject to such conditions and restrictions, if any, as the Appropriate Government may think fit to impose and to the provisions of the Indian Telegraph Act, 1885 (13 of 1885), any of the powers which the telegraph authority possesses under that Act with respect to the placing of telegraph lines and posts for the purposes of a telegraph established or maintained, by the Government or to be so established or maintained."

8. The authority given to the Corporation for erecting the transmission towers reads as follows :

"THE GAZETTE OF INDIA-EXTRAORDINARY [PART II - Sec.3(ii)]

MINISTRY OF POWER

ORDER

NEW DELHI, 24TH DECEMBER 2003

S.O.1463 (E) - Whereas Power Grid Corporation of India Limited, having its registered office at B-9, Qutub Institutional Area, Katwarin Sarai, New Delhi (hereinafter referred to as the "POWERGRID") is a Government Company registered under the Companies Act, 1956 and a licensee engaged in the business of inter-state transmission of electricity, under the Electricity Act, 2003.

And, Whereas Powergrid is required to establish transmission system and to undertake transmission of electricity through inter-state transmission system;

And, Whereas for placing and maintaining of electric lines or electrical plant under, over, along or across posts in or upon any immovable property for the transmission of electricity or for the purpose of telephonic or telegraphic communications necessary for proper coordination of works, the vesting and exercise of the powers of the Telegraph Authority under par-III of the Indian Telegraph Act, 1885 (8 of 1885) with respect to the placing of the telegraph lines and posts established or

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maintained or to be so established or maintained are required to be conferred on the Powergrid;

Now, therefore, in exercise of the powers conferred by section 164 of the Electricity Act, 2003, the Powergrid is hereby authorized to exercise all the powers vested in the Telegraph Authority under Part III of the Indian Telegraph Act, 1885 in respect of the electrical lines and electrical or maintained or to be so established or maintained for the transmission of electricity or for the purpose of telegraphic communication necessary for the proper coordination of the works.

The above authorization is subject to compliance by the Powergrid to the requirements of the provisions of the Electricity Act, 2003 and rules made thereunder.

[No.23/73/2003-R&R]

AJAY SHANKAR, Jt. Secy."

9. The project is an ambitious project involving about 55,000 Circuit Kilometers of electricity lines. It is stated that once this project comes up, it would be possible to achieve almost uninterrupted power supply. Therefore, the question of public interest should be borne in mind while individual grievances are considered.

10. The Corporation is a licensee for the purpose of this Act. The Corporation was authorised to exercise its power subject to its complying with the requirements of the provisions of the Indian Electricity Act, 2003, as seen from the extract of the authorization above.

11. Some of the decisions that have been relied on are relevant to be discussed at this stage.

12. In A.I.R. 1995 Kerala 1 [A.M. Ismail vs. Union of India], the petitioners objected to a 11 KV line that was sought to be drawn through the properties of the petitioners. When the objections were raised, the Assistant Executive Engineer referred the matter to the District Magistrate. The District Magistrate passed an order permitting the authorities to exercise the power and therefore, writ petitions were filed. The function of the District Magistrate is spelt out in paragraph 8 of the judgment, which is extracted hereunder :

"On a survey of these authorities, it is clear that the District Magistrate is discharging an administrative function and the general principle of natural justice and other procedural regulations would apply. The contention of the petitioners that the District Magistrate is given unlimited power and, therefore, the said provision is illegal cannot be accepted. The District Magistrate hears

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objectors and consider whether the objections raised by the property owners are reasonable. If the District Magistrate is of the view that it is not proper to draw line through the objectors' property, he shall decline permission to draw line through their property. If, on the other hand, the District Magistrate, finds that the objectors are raising frivolous objections, the District Magistrate is competent to rule out such objections and direct the authorities to draw the proposed line. Therefore, I do not find that Section 16(1) of the Indian Telegraph Act, 1885 is in any way violative of Art. 14 of the Constitution."

Paragraph 10 of the judgment is also relevant and is therefore extracted hereunder :

"Coming to the facts of these cases, petitioners' objection is that there are alternate lines and this was not considered by the District Magistrate. It may be noticed that this line was proposed in 1992 and because of the obstruction it could not be drawn. The proposal is to draw 3 K.M. long K.V. line for the purpose of voltage improvement and by the proposed scheme, about 400 persons are benefited. There is also proposal to install a transformer at Edayirickapuzha. Most of the petitioners are also benefited by the proposed line. It is true that some of the petitioners will have to suffer a little inconvenience by the drawal of these lines. But considering the benefit that may derive to the consumers, the objections raised by the petitioners are not weighty and the District Magistrate rightly overruled these objections. The question was elaborately considered by the District Magistrate and the alternate suggestion to construct the line along the public road was also found not feasible. It is also pointed out that the route is by the side of a thodu and the petitioners are not seriously affected in the sense that their trees are not to be cut and removed to a greater extent."

13. In A.I.R. 1987 Karnataka 282 [E. Aswathappa vs. Karnataka Electricity Board], the petitioner was a owner of agricultural lands who sought for conversion of the same to non-agricultural purposes. At that time, he came to know that a link line would pass through his land which would result in frustration of his plans and therefore, he approached the Court for a direction to the Electricity Board to remove the lines and shift them elsewhere. What happened in that case was, the Electricity Board rushed through the construction of the pylons and the conduct of the Board was disapproved of by the Court. But what is relevant in that judgment is, it has been held that even a protest would amount to obstruction.

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14. The following paragraphs in A.I.R. 1972 Kerala 47 [B.P. & T. Products vs. K.S.E. Board (FB)] are relevant :

> "As things stand, we have to hold, as Justice Raghavan did in O.P. No.3416 of 1968, from which decision the Writ Appeal (Writ Appeal No.506 of 1969) that we have hearde along with this original petition was taken, that when an authority is resisted in the exercise of power under Section 10 of the Telegraph Act, he has no alternative but to approach the District Magistrate for necessary orders under Section 16(1) of the Telegraph Act. We hold accordingly.
>
> A word may be said about what is meant by 'resistance' or 'obstruction' before we pass on to the next point as arguments turned on the question as to whether there should be physical obstruction; counsel for the respondents maintaining that there must be physical obstruction and counsel for the petitioner canvassing for the position that even objection taken to the proposal or to the action taken will be sufficient. Resistance is a much wider word than objection taken in any tangible and identifiable form will constitute resistance."
>
> .....
>
> "No doubt, the wording is not very happy, but it is impossible to accept the interpretation that counsel for the petitioner seeks to place on it. It is clear that the powers in regard to the matters specified in Section 51 of the Electricity Act have been conferred on the authorities mentioned in Ext.R5. We see nothing in the rules in regard to the interpretation of the granting of such powers which will militate against the view that we have taken. Counsel suggested that the granting of the power under Section 51 is an exception to the general scheme of the Act, that such conferment of power impairs the right to property and that every conferment of a power is an important act, and for these reasons the notifications should be construed strictly. Even by applying these principles, we are unable to read the notification in any manner other than that the powers mentioned in Section 51 have been conferred on the authorities mentioned in Ext.R5.
>
> It is clear that the proposal to lay electric supply lines has been resisted as is evident from the filing of this Original Petition. The District Magistrate will, therefore, have to be approached. We direct the respondents to do so, if they wish to proceed with the laying of the lines over the petitioner's property."

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15. As regards the question whether notice is required, in A.I.R. 2000 Madras 56 [S. Kannappan vs. Commissioner, Tiruvottriyur Municipality], it was held that since consent was not obtained from the land owners, the Electricity Board should remove the electric poles, service lines and the electricity supply lines. However, in A.I.R. 1997 Madras 64 [E. Venkatesan vs. Chairman, Tamil Nadu Electricity Board, Madras], it was held that no notice is required to the owners of the land before laying poles or constructing any tower, nor any consent is required from them. Similarly, in 1994 W.L.R. 445 [M. Nithyanandam vs. The Chairman, Tamil Nadu Electricity Board, Madras-2], it was held, following A.I.R. 1972 Kerala 47 (FB) (supra), that issue of prior notice before exercising the power under the Electricity Act is not obligatory on the part of the Electricity Board.

16. Learned counsel for the respondent also referred to A.I.R. 1975 S.C. 1039 [Commissioner of Sales Tax, U.P. vs. Parson Tools & Plants, Kanpur], A.I.R. 1992 S.C. 96 [Union of India vs. Deoki Nandan Aggarwal] and an unreported judgment of the First Bench of this Court in Writ Appeal No.370 of 2006 dated 17.11.2006 [Sundaram Home Finance Limited, Chennai vs. Tahsildar, Hosur and District Collector, Krishnagiri] and submitted that when the Act does not provide for any opportunity to the petitioners to raise their objections, before the transmission towers are erected, this Court cannot read into the provisions, what the legislature has thought fit to omit. The following paragraphs from the respective decisions cited above are relevant :

> "It is not the duty of the Court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain an umbiguous. The Court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the courts. The Court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the legislature, the Court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be. The Court of course adopts a construction which will carry out the obvious intention of the legislature but could not delegate itself. But to invoke judicial activism to set at naught legislative judgment is subversive of the constitutional harmony and comity of instrumentalities."

> "If the legislature wilfully omits to incorporate something of an analogous law in a subsequent statute, or even if there is a causus omissus in a statute, the

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language of which is otherwise plain and unambiguous, the Court is not competent to supply the omission by engrafting on it or introducing in it, under the guise of interpretation, by analogy or implication, something what it thinks to be a general principle of justice and equity. To do so, would be entrenching upon the preserves of the Legislature, the primary function of a Court of law being jus dicere and not jus dare."

"..... There is no room for visualizing two such courses of action. This will be reading words into the Section, which the legislature had not used. It is not our duty to legislate."

17. The Works of Licensees Rules, 2006 empowers the licensees to carry out the works mentioned in Rule 3(1)(a) and 3(1)(b) which provides that where the owner or occupier of the building or land objects to such works, then the licensee should obtain permissin in writing from the District Magistrate. Therefore, it is clear that as per the rules, it is the licensees who should obtain the permission from the District Magistrate and not the owners or the occupiers of the land or building who may object to the erection or installation of the works. According to the Corporation, this requirement of seeking permission in writing is excluded by Sub-rule (4) which provides that nothing contained in the rule will affect the licensee's powers as conferred upon him under Section 164 of the Electricity Act.

18. Section 164 of the Indian Electricity Act, 2003 deals with the conferment of power by the appropriate Government on a public officer or a licensee for the purpose of placing electric lines or electric plants for the transmission of electricity. This conferment is made subject to conditions and restrictions which the appropriate Government may think fit to impose. It is also subject to the provisions of the Indian Telegraph Act and the powers which the telegraph authority possesses under the Act. Therefore, it is clear that it was open to the appropriate Government to give a carte blanche to the licensee with regard to the manner in which they exercise their power. But it is also open to the appropriate Government to subject these powers to such conditions and restrictions as the appropriate Government may think fit. This is with regard to the provisions of the Indian Electricity Act.

19. As regards the provisions of Indian Telegraph Act, 1885, there are no such qualifying phrases. The power conferred on the licensee is subject to the provisions of the Indian Telegraph Act. Section 10 of the Indian Telegraph Act deals with the power of the telegraph authority to place and maintain telegraph lines and posts. The power that the authority shall exercise is only in

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respect of of telegraph lines established or maintained by the Central Government. The Central Government does not acquire any right on the land except to use the property for installing the telegraph lines. In fact, this was repeatedly stressed upon by the learned counsel for the Corporation to support the Corporation's case that the opportunity of hearing to the land owners as envisaged under an Act like the Land Acquisition Act is not required in the present case, because neither the licensee nor the Government acquires any right over the land under the Act. The only right that they have under these rules is the right to enter upon the land, install the towers or poles, level up the land and remove themselves; they do not get any larger right. Section 10 also provides that if the property in respect of which the telegraph authority exercises its powers is a property belonging to a local authority, it shall not do so without the permission of that authority. We are not concerned with these provisions in the present case. As regards the property belonging to any person other than a local authority, the telegraph authority shall see to it that as little damage as possible is done to the land. Section 16 deals with the provisions applicable to other property and though the wording is different, Section 16, in spirit, is almost identical to Sub-rule (4) of Rule 3 of the Works of Licensees Rules.

20. It is no doubt true that all the judgments referred to by either side and discussed above arose out of the old Electricity Act. After the enactment of the Indian Electricity Act, 2003, the earlier provisions relating to Schemes etc. no longer hold the field. But however, the Indian Telegraph Act remains unchanged and therefore, the provisions of the Indian Telegraph Act cannot be wished away. Moreover, as we have seen already, the authorization given under Section 164 of the Act conferring powers on the licensee may be an absolute authorization or it could be a qualified or a modified or a limited authorization. The authorization granted to the Corporation is subject to their complying with the provisions of the Electricity Act, 2003. Therefore, the Corporation cannot be heard to say that it can ignore the provisions of Sub-rule (4) of Rule 3. Even if one were to accept that, the Corporation cannot deny that its powers are limited by Section 16 of the Indian Telegraph Act. Therefore, when there are objections to the laying of telegraph lines or the erection of transmission towers as the case may be, the Corporation is bound to get the permission of the District Magistrate.

21. We have already seen that the objections need not be in a particular form; even a protest can be termed as an objection. The very fact that all these writ petitioners have come to Court seeking mandamus shows that they are protesting against the project of the Corporation.

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22. In atleast one writ petition, it is contended that instead of the transmission towers being installed in a straight line, there is a deviation. For this, there may be perfectly justifiable technical explanation on the side of the Corporation. This project has been conceived by technical experts, and considering the magnitude of the project and the fact that it covers large extent of land running through many districts, the minor deviations that the petitioner alleges must be ignored. However, it is the jurisdiction of the District Magistrate to consider the objections, and it will be possible for the objector as well as the Corporation to explain before the District Magistrate the manner in which the land lies and prove either that the erection of the transmission towers is improper or that the erection of the towers has been done in the optimum manner possible and that there could be no other way of doing it.

23. Various contentions are raised as to the distance between the petitioners' properties and the transmission towers, the manner in which the transmission towers bisect the petitioners' lands etc. These are all questions of fact, which the District Magistrate is better enabled to deal with. When the Act clearly requires the licensee to seek permission of the District Magistrate when there is an objection, the licensee must comply with this provision. This does not mean that there is a demand that opportunity be given to the petitioners or that there is a requirement of obtaining consent.

24. Section 16(1) of the Indian Telegraph Act clearly speaks of the permission of the District Magistrate when there is a resistance or obstruction to the exercise of power under Section 10. The requirement of the permision from the District Magistrate is clearly stipulated under Section 16. This is not something that the Court introduces, which the legislature did not intend to. In fact, Sub-section (2) of Section 16 makes non-compliance of an order of the District Magistrate by any person a specific offence under Section 188 of the Indian Penal Code.

25. For all these reasons, I am of the opinion that since there are objections to the installation of the transmission towers, the Corporation should have obtained permission from the District Magistrate.

26. In one case, it appears that there has been an objection in writing. But each of these writ petitions is in fact an objection or a resistence to the Corporation's carrying out the installation of the transmission towers.

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27. Therefore, all these writ petitions are disposed of as follows :

> The Power Grid Corporation shall, as early as it deems fit, approach the District Magistrate concerned in each case for permission to deal with the objections raised by the petitioners in each case and the said District Magistrate shall consider the objections and pass orders in accordance with the provisions which have been extracted above. This project involves huge expenditure and therefore, we cannot permit any avoidable delay. The petitioners cannot think that by avoiding any notice or summons from the District Magistrate, they can indefinitely delay the matter. Immediately on receipt of the request by the Corporation for permission, the District Magistrate shall issue notice to the respective objectors and after hearing their objections, shall pass orders in accordance with law, within a period of six weeks from the date on which the Corporation makes a request for permission to the District Magistrate.

There will no order as to costs. Consequently, Miscellaneous Petition Nos.1, 1, 1, 1, 1, 1, 1 and 1 of 2006 are closed.

ab

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

TO

1. The District Collector
Coimbatore District,
Coimbatore

2. The Superintending Engineer,
Kovai Electricity Distribution Circle,
Kovai South
Coimbatore

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3. The Power Grid Corporation (India) Limited,
59, State Bank Colony,
West Tambaram,
Chennai-45.

4. The General Manager,
Power Grid Corporation of India Ltd.,
32, Race Course Road, Bangalore 560 001.

5. The Power Grid Corporation of India Ltd,
The Government of India Enterprises
11/3, PMR Layout Entension,
5th Street,
Goldwins Civil Aerodrome,
Coimbatore-14.

6. THE CHAIRMAN
M/S POWER GRID CORPORTION OF INDIA LTD
MINISTRY OF POWER,
KATWARIA SARAI, NEW DELHI.

7. The Chief Engineer,
The Power Grid Corporation of India Ltd,
3, 1st Floor, PMR Layout Entension,
Civil Aerodrome Port CBE.

+ one cc to Mr. D. Krishnakumar, Advocate sr no. 3342
+ one cc to Mr. S.A. Hafiz, Advocate sr no. 3223
+ one cc to Mr. A.V. Bakthavatchalam Advocate sr no. 3283
+ one cc to Mr. N. Manohran, Advocate sr no. 3190
+ one cc to Mr,. J. Ravindran, Advocate sr no. 3735
+ one cc to Mr. M. MD. Ibrahim Ali, Advocate sr no. 3330
+ one cc to Mrs. A.L. Gandhimathi, Advocate sr no. 3281

JSK(CO)
KK, KM, BP, NM, SR/20.1.2007

W.Ps.49172, 32374,36024,
39330, 48614, 47813, 38812
and 38848 of 2006

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